



City of Albuquerque

Legislative File Number AC-06-14 (version 1)

INTER-OFFICE MEMORANDUM

June 1, 2006

AC-06-14 - 06EPC-00464; Project # 1002819 Consensus Planning agent for Diamond Mesa LLC c/o Longford Homes, appeals the Environmental Planning Commission's denial of a Site Development Plan for Building Permit for all or a portion of Tract E-6-A-1, Albuquerque South, U-3, zoned SU-1 for R-2/RT, located on the south side of Gibson Blvd SW, between 98th St SW and the Arroyo Arroyo Drainage R-O-W, containing approximately 30 acres. (N-9). David Stallworth, Staff Planner.

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The Environmental Planning Commission ("EPC" or "Commission") denied the above-referenced development request (with a vote of 6-0, 1 abstention) at its May 18, 2006 public hearing. The request was for consideration and approval of a site development plan for building permit purposes to construct a 474-unit residential condominium development. The project site is centrally located within the *98th and Gibson Community Activity Center*. Both the *West Side Strategic Plan* and the *Rio Bravo Sector Development Plan* govern this site.

STANDING:

Longford Homes, d.b.a. Diamond Mesa, LLC, is the contract purchaser of the subject property and therefore has standing to seek appellate relief, per §14.16.4.4.B.2 of the City's *Comprehensive Zoning Code*. This request for appellate relief was filed in a timely manner.

GROUND FOR APPEAL:

The appellant articulates the reasons for the appeal as required by §14.16.4.4.B.3 of the City's *Comprehensive Zoning Code*. The appellant alleges that the EPC erred: (a) in applying adopted city plans, policies, and ordinances in arriving at the decision; (b) in the appealed action or decision, including its stated facts, and; (c) in acting arbitrarily or capriciously or manifestly abusive of discretion.

Below is the appellant's argument (**summarized in bold text**) followed by responses from the City of Albuquerque Planning Department:

“Contrary to its decision of denial, the EPC findings and substantial evidence in the record showed that Diamond Mesa complied with applicable city plans, policies and procedures.”

Response: This is an incorrect assumption, based upon Findings three (3), seven (7) and nine (9) and § 14.16.2.22 of the *Comprehensive Zoning Code* governing SU-1 zoning.

The purpose statement for §14.16.2.22 establishes that the SU-1 zone “provide(s) suitable sites for uses which are special... and in which the appropriateness of the use to a specific location is partly or entirely dependent on the character of the site design.” §14.16.2.22.A.3 specifically grants discretion to the EPC to impose any additional requirements deemed necessary to implement the purposes of the Zoning Code. This could also imply that the EPC may have the same discretion to reject a development proposal outright if the proposal is found to be severely deficient and lacking.

Finding number three (3) reads as follows:

“A three-fold request for consideration and approval of a zone change from SU-1/R-2 and RT to SU-1/C-1 for a 4.8-acre portion of the overall site and accompanying site development plans for both subdivision and building permit to construct a 173-lot, single-family residential subdivision on the remaining portion was heard in October of 2005 (05EPC 01388/01389/01391). Among the concerns expressed by the Environmental Planning Commission during the October hearing included the lack of house designs, the average lot area, the perceived lack of diverse lot sizes and concerns over building areas. There was no public opposition to the proposal. Although the Commission voted in favor of a 30-day deferral and directed the applicant to modify the site plan in response to their concerns, the applicant subsequently withdrew the request.”

Finding number nine (9) reads as follows:

“The EPC has determined that the proposed density coupled with the product type lack of connectivity, repetitiveness, proposed parking and overall site plan layout is inappropriate and unacceptable.”

Finding number three (3), which is undisputed by the applicant, alludes to a development proposal on the same site that was deemed unacceptable by the EPC during the October, 2005 public hearing and, in their opinion, may have required significant revision in order to obtain their approval. The record shows that during the May, 2006 public hearing, the EPC made comments to that effect, along with the bases for their previous decision. The record also shows that the EPC further noted that the subsequent development request, which is the subject of this appeal: (a) contained several similar objectionable

elements from the previous development request; (b) significantly exceeded the number of units proposed under the previous development request, and; (c) was presented in a manner that completely disregarded the Commission's concerns as expressed in October of 2005. The record also shows that the applicant did not contest these comparisons during the public hearing and, in fact, acknowledged that there may have been some "misunderstanding" as to the nature of the Commission's concerns over the previous development. On the basis of these comparisons, coupled with the minimal protest from the applicant, it may be understood that the EPC had no other choice than to conclude with the additional Finding number nine (9), and that in doing so, the EPC acted within the discretionary limits established under the Zoning Code.

Finding number seven (7) reads as follows:

"The development proposal may be contrary to *City/County Comprehensive Plan, Policies II.B.5.d and II.B.5.e*, and *West Side Strategic Plan, Policies 2.5 and 8.16* because: (a) the proposal could adversely impact at least two area schools, thus potentially undermining the area by placing unreasonable strains upon area school resources; (b) There is no guarantee that 100% owner-occupancy will be assured and that real estate speculation leading to the creation of rental units will be entirely discouraged. Even in the presence of strict covenants, conditions and restrictions (CCR's), enforceability will remain an issue, and rental units could potentially undermine neighborhood stability by introducing perpetually transitional housing."

With regard to this Finding, the record shows that at least two schools, Adobe Acres (misabeled "Adobe Wells" in the staff report) Elementary and Harrison Middle Schools are at or exceed capacity. The record will also show that the conclusions of Planning staff were based upon policies relative to the *West Side Strategic Plan (WSSP)* that were in effect at the time of the May, 2006 public hearing, specifically *Policy 2.5*. This *WSSP* policy reads as follows:

"When considering approval of subdivisions or site development plans for residential development... the City Planning Department shall consider whether local public schools have sufficient capacity to support the increased number of homes. If area schools are at or over their designed capacity, then the requested action should be denied unless the applicant demonstrates that the proposed development will create no net increase in enrollment for area schools (e.g.: senior housing)..."

WSSP Policy 8.16 reads as follows:

"New school facilities should be located within (activity) centers whenever possible to provide easy access to local residents and reinforce the urban form established in this Plan. It is understood that cost and site availability factors may preclude this opportunity from occurring in every case"

Staff drew a correlation in their report between cited policies from the *WSSP* and *Policy II.B.5.d* of the *City/County Comprehensive Plan*, which reads as follows:

"The location, intensity and design of new development shall respect existing neighborhood values, natural environmental conditions and carrying capacities, scenic resources and resources of other social and recreational concern."

A second correlation was drawn between cited policies from the *WSSP* and *Policy II.B.5.e* of the *City/County Comprehensive Plan*, which reads as follows:

“New growth shall be accommodated through development in areas where vacant land is contiguous to existing programmed urban facilities and services and where the integrity of existing neighborhoods can be ensured”

Based on these correlations, Finding number seven (7) establishes that the development proposal does not totally comply with applicable city plans and policies. The record shows that the applicant unsuccessfully challenged this staff Finding with its inclusion of an “Education Impact Market Study,” as authored by independent consultant Todd Clarke, in its application. Staff, however, does not challenge appellant’s position on the Findings, number two (2) and four (4).

“The EPC’s rejection of the proposed Diamond Mesa development was arbitrary, capricious and not in accordance with law.”

“The EPC arbitrarily rejected accurate proposed findings in support of the project contrary to the evidence presented.”

“The EPC decision of denial is not in accordance with City plans, policies and ordinances.”

Response: These are incorrect assumptions, again based upon Findings three (3), seven (7) and nine (9) and §14.16.2.22 of the *Comprehensive Zoning Code* governing SU-1 zoning, as referenced in the previous response. The applicant cites the dismissal of the original staff Finding number eight (8) by the EPC during the course of the hearing, but fails to acknowledge or dispute the accepted Finding, number seven (7), which establishes that the proposal runs counter to policies within both the *City/County Comprehensive Plan* and the *WSSP* and, in fact, establishes the basis for the manner in which the original staff Finding number eight (8) was worded.

Original staff Finding number eight (8) reads as follows:

“Under normal circumstances, the development proposal could further the following goals and policies: (a) *City/County Comprehensive Plan, Policies II.B.5.d, II.B.5.i, II.B.5.k and II.B.5.m*- The site plan review process should help to provide entry-level housing opportunities, ensure adequate buffering and sufficient mitigation, promote amenable site design that is pedestrian-friendly, and prompt the necessary discussion to achieve these ends; (b) *City/County Comprehensive Plan, Policy II.B.5.e*- The developer shall be responsible for any necessary street and drainage improvements and utility extensions; (c) *City/County Comprehensive Plan, Policies II.B.5.h, II.B.7.f and II.B.7.i*, and *West Side Strategic Plan, Policy 3.42*- Moderately intensive, multi-family residential development will be centrally located within an activity center and will provide a reasonable transition and buffer area for nearby single-family development to the south of the site; (d) *City/County Comprehensive Plan, Policy II.D.4.g*- The site plan review process should assist in furthering this goal by emphasizing active interconnectivity within the activity center and promote

pedestrian/bicycle mobility and convenience.”

The original staff Finding, which was eliminated by the EPC during the May, 2006 public hearing, acknowledges the existence of peculiar circumstances or events, in this case the school overcrowding problem on the West Side and the subsequent policy revisions to the WSSP in response to this problem, that may have been instrumental in the denial of an otherwise typical or ordinary site plan proposal. It may be understood, however, that through the discretion granted under §14.16.2.22 of the *Comprehensive Zoning Code*, the EPC disagreed with the original staff Finding and determined it to be either unnecessary or inapplicable as the development proposal lacked sufficient merit for approval.

CONCLUSION:

The EPC considered all relevant information for this case. They acted within their power and authority as granted them. The EPC reviewed the request as they would for a site development plan for subdivision and a site development plan for building permit. The EPC found that the request did not further a preponderance of the City's goals and policies regarding land use, activity centers, transportation, noise, developed landscape, community identity, and housing. The EPC did not err in applying adopted city plans, policies, and ordinances and did not act arbitrarily, capriciously or manifestly abusive of their discretion. The Planning Department supports the decision of the EPC and recommends denial of the subject appeal.

APPROVED:

Russell Brito, Division Manager
Development Review Division
Planning Department

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